

Message Text

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ORIGIN L-03

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DRAFTED BY L/M:NHELY:AD

APPROVED BY L/M:KEMALMBORG

JUSTICE - MR. KEENEY

TREASURY - MR. CLAUSON

SEC - MR. PEARCE

EUR - MISS KLINGERMANN

L/T - MR. BOYD

L/S - (INFO)

----- 106843

R 191827Z DEC 75

FM SECSTATE WASHDC

TO AMEMBASSY BERN

UNCLAS STATE 299176

E.O. 11652: N/A

TAGS: PFOR, CFED, SZ

SUBJECT: JUDICIAL ASSISTANCE TREATY

REF: (A) 4870; (B) BERN 5120

1. LANGUAGE SERVICES FOUND ENGLISH AND GERMAN TEXTS THE SAME IN ALL SUBSTANTIVE RESPECTS. THUS DEPARTMENT APPROVES GERMAN TEXT AS SET OUT IN REF. (B).

2. DEPARTMENT REQUESTS EMBASSY TO TRANSMIT TO GOS THE AGREED UPON TEXT REFTEL (A) WITH CHANGE DESCRIBED PARA 1 OF REFTEL (B).

3. COMPLETE TEXT OF NOTE IN ENGLISH WITH AGREED UPON CHANGES THUS READS AS FOLLOWS:

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"EXCELLENCY, I HAVE THE HONOR TO REFER TO THE TREATY BETWEEN

THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON
MUTUAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT BERN,
MAY 25, 1973, AND THE SWISS FEDERAL LAW OF OCTOBER 3, 1975
RELATING TO THE TREATY WITH THE UNITED STATES OF AMERICA
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS.

IN VIEW OF THE PROVISIONS OF PARAGRAPH 2 OF ARTICLE 26 OF
THE ABOVE MENTIONED SWISS FEDERAL LAW, THE GOVERNMENT OF
THE UNITED STATES IS CONCERNED THAT EVIDENTIARY MATERIALS
OBTAINED BY THE APPROPRIATE SWISS AUTHORITIES PURSUANT TO
THE APPLICATION OF PARAGRAPH 1 OF ARTICLE 12 OF THE TREATY
MAY NOT BE ADMITTED INTO EVIDENCE IN THE COURTS IN THE
UNITED STATES OF AMERICA. THIS CONCERN IS BASED UPON THE
UNDERSTANDING THAT CERTAIN CANTONS DO NOT HAVE PROVISIONS
FOR TAKING TESTIMONY UNDER EITHER OATH OR AFFIRMATION.
WHERE THOSE CIRCUMSTANCES EXIST, IT IS THE UNDERSTANDING
OF MY GOVERNMENT THAT A WITNESS NONETHELESS WILL BE URGED
TO AGREE TO GIVE HIS TESTIMONY PURSUANT TO FORMAL OATH OR
AFFIRMATION.

I HAVE BEEN REQUESTED TO ASCERTAIN THE PROCEDURES WHICH
WOULD BE INVOKED UPON RECEIPT OF AN APPLICATION FROM THE
CENTRAL AUTHORITY OF THE UNITED STATES PURSUANT TO THE
PROVISIONS OF PARAGRAPH 1 OF ARTICLE 12 OF THE TREATY.
SHOULD AN OATH OR AFFIRMATION BE REFUSED IN THE RELEVANT
CANTON, IT IS THE UNDERSTANDING OF MY GOVERNMENT THAT
THE PENAL SANCTIONS PROVIDED BY ARTICLE 307 OF THE SWISS
CRIMINAL CODE ARE APPLICABLE IN ALL CANTONS OF THE SWISS
CONFEDERATION FOR WILLFULLY GIVING FALSE TESTIMONY, EVEN
WHERE AN OATH OR AFFIRMATION IS NOT PROVIDED FOR IN THE
PROCEDURAL LAW OF THE PARTICULAR CANTON. BASED ON THIS
UNDERSTANDING IT IS AGREED THAT, IN THE EVENT A WITNESS
DECLINES TO GIVE TESTIMONY UNDER A FORMAL OATH OR
AFFIRMATION AND THERE IS NO SPECIFIC PROCEDURAL PROVISION
FOR AN OATH OR AFFIRMATION IN THE APPLICABLE PROCEDURAL
LAW, THE WITNESS WILL BE ADMONISHED TO TELL THE TRUTH PRIOR
TO GIVING TESTIMONY AND WILL BE ADVISED OF THE CONSEQUENCES,
UNDER THE SWISS CRIMINAL CODE, OF HIS FAILURE TO TELL THE
TRUTH AND OF THE FACT THAT THE TRANSCRIPT WILL REFLECT
SUCH INSTRUCTIONS.

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IN ADDITION TO THE PROCEDURE OUTLINED ABOVE, AFTER THE
TESTIMONY HAS BEEN TAKEN, IT WOULD BE DESIRABLE THAT THE
WITNESS SIGN THE TRANSCRIPT AFFIRMING THAT HIS TESTIMONY IS
TRUE, AND IT IS THE UNDERSTANDING OF MY GOVERNMENT THAT THE
WITNESS WILL BE URGED TO SIGN SUCH A STATEMENT. IF THE
FOREGOING UNDERSTANDING IS LIKEWISE THE UNDERSTANDING OF
THE SWISS FEDERAL COUNCIL, I WOULD APPRECIATE A CONFIRMATION

FROM YOUR EXCELLENCY TO THAT EFFECT.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST
CONSIDERATION."

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